

Case: 20-1698 Document: 00117653882 Page: 1 Date Filed: 10/08/2020 Entry ID: 6373444

No. 20-1698

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UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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OBE E. JOHNSON,

Plaintiff - Appellant,

v.

LCDR. FABIOLA ACARON PORRATA-DORIA; ESTADO LIBRE  
ASOCIADO DE PUERTO RICO; ADMINISTRACION DE CORRECCION  
DE PUERTO RICO,

Defendants - Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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MOTION IN COMPLIANCE WITH ORDER AND TO DISMISS APPEAL

COME NOW, Defendants-Appellees the Commonwealth of Puerto Rico,  
and the Puerto Rico Department of Corrections and Rehabilitation, through the  
undersigned attorney and respectfully state and pray as follows:

1. On September 24, 2020, this Honorable Court ordered the parties to  
show cause as to whether the automatic stay provided for in Title III of PROMESA  
stays this appeal. In its order, this Honorable Court noted that the notice of appeal  
appeared to have been filed late. For the reasons that follow, appearing Defendants

assert that (1) this Honorable Court lacks jurisdiction to resolve this appeal because it was filed late; and (2), in the alternative, the Title III stay applies to this appeal.

2. This appeal originates in consolidated cases No. 14-1481 (JAG) and No. 15-1571 (JAG), filed before the United States District court for the District of Puerto Rico. Plaintiff brought these cases against the Commonwealth of Puerto Rico, the Puerto Rico Department of Corrections and Rehabilitation<sup>1</sup>, and his former attorney, Fabiola Acarón Porrata-Doria. He alleged that he was wrongly convicted of various felonies before the Puerto Rico courts, which caused him to lose his carpet cleaning company. He sued the Commonwealth defendants under 42 U.S.C. §1983, requesting an award of \$25 million in damages. In these cases, the district court entered a Memorandum and Order and a Judgment dismissing the complaints with prejudice on October 23, 2015 (Dkt. ## 28 and 29). On January 11, 2016, the district court entered an Order (Dkt. # 32), in which it denied a motion requesting order filed by Plaintiff (Dkt # 30). On June 29, 2020, Plaintiff filed a Notice of Appeal before this court, which referred it to the district court.

3. From the above, Plaintiff's Notice of Appeal is clearly untimely. Fed. R. App. 4(a) requires that a notice of appeal be filed within thirty (30) days after the district court has entered the judgment appealed from. The district court entered its

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<sup>1</sup> The Department of Corrections and Rehabilitation is a department of the Commonwealth of Puerto Rico and may not be sued separately from the Commonwealth. The undersigned attorney does not represent Mrs. Acarón.

judgment on October 23, 2015. On January 11, 2016, the district court denied a motion requesting order filed by Plaintiff. Even assuming that this motion served to toll Plaintiff's time to appeal, it would have ended on February 10, 2016. Since Plaintiff filed his Notice of Appeal from this judgment on June 29, 2020, it is more than four years late.

4. Because Plaintiff's Notice of Appeal is untimely, this Honorable Court has no jurisdiction to hear it. Vaquería Tres Monjitas, Inc. v. Comas-Pagán, 772 F. 3d 956, 960 (1<sup>st</sup> Cir. 2014). Compliance with Fed. R. App. 4(a) is "mandatory and jurisdictional". García-Velázquez v. Frito Lay Snacks Caribbean, 358 F. 3d 6, 8 (1<sup>st</sup> Cir. 2004), quoting Browder v. Illinois Dept. of Corrections, 434 U.S. 257, 264 (1978). Therefore, this Honorable Court should dismiss this appeal without entering on any other questions.

5. In the alternative, this appeal would be stayed by the Commonwealth of Puerto Rico's filing of a petition for reorganization of its debts under title III of PROMESA, because it is a pre-petition claim for money damages against the Commonwealth.

6. On May 3, 2017, the Financial Oversight and Management Board for Puerto Rico ("FOMB"), on behalf of the Commonwealth of Puerto Rico ("the Commonwealth"), filed a petition for relief under Title III of PROMESA, 48 U.S.C. § 2161, *et seq.*, in the United States District Court for the District of Puerto Rico.

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7. Pursuant to sections 362(a) and 922(a) of the Bankruptcy Code, as incorporated by reference under section 301(a) of PROMESA, the commencement or continuation “of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement” of the petition under Title III, or “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under” a Title III proceeding is automatically stayed without further action. 11 U.S.C. §§ 362(a), 922(a); 48 U.S.C. § 2161(a) (emphasis provided). The Commonwealth of Puerto Rico is the debtor in the Petition pursuant to 48 U.S.C. § 2161(c)(2).

8. The section 362(a) stay applies to all actions brought directly against the debtor, including requests for injunctive relief. Municipality of San Juan v. Commonwealth of Puerto Rico, 919 F. 3d 565, 576-577 (1<sup>st</sup> Cir. 2020), citing 3 Collier on Bankruptcy par. 362.03 (16th ed. 2018)); Newberry v. City of San Bernardino (In re City of San Bernardino), 558 B.R. 321, 329 (C.D. Cal. 2016). “The automatic stay is ‘extremely broad in scope’ and, ‘applies to almost any type of formal or informal action taken against the debtor or the property of the estate.’” Assured Guaranty Corp. v. The Financial Oversight and Management Board for Puerto Rico (In re Financial Management Board of Puerto Rico), 919 F. 3d 121, 129 (1<sup>st</sup> Cir. 2019), quoting In re Slabicki, 466 B.R. 572, 580 (1st Cir. B.A.P. 2012) (quoting Patton v Bearden, 8 F. 3d 393, 399 (6th Cir. 1993)); Montalvo v. Autoridad

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de Acueductos y Alcantarillados (In re Montalvo), 537 B.R. 128, 140 (Bankr. D.P.R. 2015).

9. The automatic stay is among the most basic of debtor protections under bankruptcy law and is intended to give the debtor breathing room by stopping all collection efforts against the debtor. In re Soares, 107 F. 3d 939, 975 (1st Cir. 1997). The stay springs into being immediately upon the filing of a bankruptcy petition, operates without the need for judicial intervention, and remains in force until the bankruptcy court either disposes of the case or lifts the stay. Id. This respite enables debtors to resolve their debts in a more orderly fashion, and also safeguards their creditors by preventing "different creditors from bringing different proceedings in different courts, thereby setting in motion a free-for-all in which opposing interests maneuver to capture the lion's share of the debtor's assets." Id., citing Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 114 (1st Cir.1994).

10. Plaintiff's cause of action against the Commonwealth clearly seeks to collect damages from the Commonwealth's resources, and litigation of this appeal has forced the Commonwealth to spend funds. Further, his claims do not fall under any of the exceptions to the bankruptcy stay set forth in Section 362 (b). Accordingly, this appeal is stayed by Section 362 of the Bankruptcy code, as incorporated by reference under Section 301(a) of PROMESA. Municipality of San Juan, supra; Assured Guaranty Corp., supra.

11. In light of the above, the Commonwealth asserts, in the alternative that this appeal is not dismissed for being untimely, that it is stayed pursuant to Title III of PROMESA. In such a case, Plaintiff would have the alternative to seek from the Title III court a lift of the stay, pursuant to the Eleventh Amended Case Management Procedures established for such purpose in the Title III proceedings. Bkr. No. 17-03283 (LTS), Docket No. 11855.

13. The Commonwealth does not waive any right or defense arising from Title III of PROMESA and the Commonwealth's Petition under Title III, or from the filing of that notice. The Commonwealth reserves its right to plead or address any pending matter or claim in this case.

WHEREFORE, appearing Defendants respectfully request that this Honorable Court take notice of the above and dismiss the present appeal for being untimely, or, in the alternative, stay all proceedings in this appeal.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 8th day of October, 2020.

ISAÍAS SÁNCHEZ-BÁEZ  
Solicitor General of Puerto Rico

*s/Carlos Lugo-Fiol*  
CARLOS LUGO-FIOL

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record. Additionally, I am sending a true and exact copy of this motion by electronic mail to Mr. Obe E. Johnson, Guayama Correctional Complex, AB-033, P.O. Box 10005, Guayama, PR 00785-0000.

In San Juan, Puerto Rico this 8th day of October, 2020.

*s/ Carlos Lugo-Fiol*  
CARLOS LUGO-FIOL  
USCA No. 41677  
P.O. Box 260150  
San Juan, PR 00926  
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U.S. Bankruptcy Court

District of Puerto Rico

Notice of Electronic Filing

The following transaction was received from Ramirez, Marian entered on 6/2/2020 at 9:38 AM AST and filed on 6/2/2020

Case Name: COMMONWEALTH OF PUERTO RICO and PUERTO RICO ELECTRIC POWER AUTHORITY

Case Number: 17-03283-LTS9

Document Number: 13316

Docket Text:

MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART OBE E. JOHNSON'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY (DOCKET ENTRY NO. 12772). Related document: [12772] MOTION to be excluded from PROMESA filed by Obe E. Johnson Signed by Judge Laura Taylor Swain on 6/2/2020 (mr) s/c sent to Obe E. Johnson.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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In re:

PROMESA  
Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO  
et al.,

(Jointly Administered)

Debtors.<sup>1</sup>  
-----X

MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART OBE E.  
JOHNSON'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY (DOCKET ENTRY NO. 12772)

Before the Court is the *Motion to Be Exclude from Law PROMESA* (Docket Entry No. 12772 in Case No. 17-3283,<sup>2</sup> the "Motion"), filed by Obe E. Johnson (the "Movant"), which the Court construes as seeking relief from the automatic stay imposed by the filing of the above-captioned Title III case on (i) a case captioned Johnson v. Morel, Case No. 19-1534 (the "Appeal"), which is currently pending before the United States Court of Appeals for the First

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

<sup>2</sup> All docket entry references are to entries in Case No. 17-3283, unless otherwise noted.

Circuit, on appeal from Case No. 09-01172 (the “Habeas Corpus Action”) in the United States District Court for the District of Puerto Rico, and (ii) a case captioned Johnson v. Porrate-Doria, Case No. 14-1841 (the “Damages Action”), which Movant filed in the District of Puerto Rico in November 2014.

The Court has considered carefully all of the parties’ submissions.<sup>3</sup> For the following reasons, the Motion is granted in part and denied in part.

#### BACKGROUND

##### *Habeas Corpus Action and Appeal*

On February 20, 2009, Movant filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 with the District of Puerto Rico, alleging that his criminal conviction in Commonwealth court and the prison sentence that was imposed on him as a result were unlawful. (*See Response of the Commonwealth of Puerto Rico to Motion to Be Excluded from Law PROMESA Filed by Obe E. Johnson* (Docket Entry No. 12968, the “Response”), ¶ 1.) On June 24, 2009, the District Court denied Movant’s petition. (*Id.*) Thereafter, the First Circuit denied both Movant’s request to file a successive petition for a writ of habeas corpus with the District Court, and Movant’s successive petition to the First Circuit seeking a writ of habeas corpus. (*Id.* ¶ 2.) On June 3, 2019, Movant appealed the District Court’s order denying his petition for a writ of habeas corpus. (*Id.* ¶ 3.) That appeal currently remains pending before the First Circuit. (*Id.*)

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<sup>3</sup> Pursuant to the Court’s *Order Scheduling Briefing of Motion Filed by Obe E. Johnson* (Docket Entry No. 12824), Movant’s reply papers were due on May 6, 2020. No reply papers have been filed to date.

### *Damages Action*

On November 18, 2014, Movant commenced a civil action against the Commonwealth, among other defendants, seeking damages in connection with his allegedly wrongful criminal conviction in Commonwealth court.<sup>4</sup> (*Id.* ¶ 4.) On October 23, 2015, the District Court granted the Commonwealth's motion to dismiss the Damages Action for failure to state a claim, thereby dismissing all of Movant's claims, with prejudice. (*Id.* ¶¶ 5-6.) On January 11, 2016, the District Court denied Movant's motion seeking reconsideration of the order dismissing Movant's claims. (*Id.* ¶ 7.) No appeal of either decision was timely filed. (*Id.*)

### *Lift Stay Motion*

Movant, who apparently remains incarcerated, filed the instant Motion on April 7, 2020. The Motion asserts that Movant "was illegally admitted into the Puerto Rico Correction Prison on February 19, 2005," and seems to contend that, because Movant's incarceration began before the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") was enacted, the automatic stay now in effect pursuant to PROMESA should not apply to an action seeking compensation for the time he has spent incarcerated. (Mot. at 1.) To that end, the Motion asserts that this Court should "hear this matter . . . according to the time" Movant was first incarcerated, that "PROMESA should not be referred to" Movant, and that Movant should be compensated by the Commonwealth government because he "was illegally incarcerated before . . . PROMESA come into exist[ence]." (*Id.* at 2.) Although the Motion does not explicitly seek stay relief with respect to any particular action, the Motion references a "case [that] is currently pending before the United States Court of Appeals for the First Circuit" arising

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<sup>4</sup> The Damages Action was originally filed in the United States District Court for the Eastern District of Pennsylvania, and was transferred to the District of Puerto Rico on November 21, 2014. (*See* Resp. ¶ 4 n.4.)

from “an original proceeding successive habeas corpus,” and attaches as exhibits a letter from the Clerk of Court for the First Circuit concerning Case No. 19-1534 as well as the District Court’s *Memorandum and Order* dismissing Movant’s claims in the Damages Action. (See id. at 1; Docket Entry No. 12772-1.)

In its Response, the Commonwealth indicates that, with respect to the Appeal and the Habeas Corpus Action, it agrees to a limited modification of the automatic stay solely to allow the case to proceed to final judgment, and to permit the execution and enforcement of any judgment solely with respect to Movant’s request for equitable relief. (Resp. ¶ 11.) The Commonwealth contends that the automatic stay should otherwise continue to apply to the Appeal and the Habeas Corpus Action. (Id.) As to the Damages Action, the Commonwealth argues that relief from the automatic stay is unwarranted because that action was dismissed years ago and no timely appeal was filed, and because Movant has failed to demonstrate cause to lift or modify the stay under section 362(d) of the United States Bankruptcy Code, 11 U.S.C. § 362(d). (See Resp. ¶¶ 13-19.)

As noted above, the Court construes the Motion as a request for relief from the automatic stay as it applies to the Appeal, the Habeas Corpus Action, and the Damages Action.

#### DISCUSSION

Section 362(d)(1) of the Bankruptcy Code, made applicable in these proceedings by Section 301 of PROMESA, 48 U.S.C. § 2161, permits a court to grant relief from the automatic stay “for cause.” To determine whether cause exists to lift the automatic stay, courts in this district examine the factors first enumerated by the United States Court of Appeals for the Second Circuit in *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990) (“*Sonnax*”).

See, e.g., Brigade Leveraged Capital Structures Fund Ltd. v. Garcia-Padilla, 217 F. Supp. 3d 508, 518 (D.P.R. 2016) (citing Sonnax). Of particular relevance to the instant case are the following factors identified in the Sonnax decision: “whether relief would result in a partial or complete resolution of the issues,” “the interests of judicial economy and the expeditious and economical resolution of litigation,” and the “impact of the stay on the parties and the balance of harms.” Sonnax, 907 F.2d at 1286.

In light of the Commonwealth’s consent to a limited modification of the automatic stay in connection with the Appeal and the Habeas Corpus Action, the Court finds cause to modify the automatic stay solely to the extent necessary to allow (i) the Appeal and the Habeas Corpus Action to proceed to final judgment, and (ii) for the execution and enforcement of any judgment solely with respect to Movant’s request for equitable relief. It appears that the interests of judicial economy and expeditious resolution of the Appeal and the Habeas Corpus Action are best served by permitting the litigation to proceed in this fashion. Nevertheless, Movant has identified no basis, and thus has failed to demonstrate cause, to further modify the automatic stay as it applies to the Appeal and the Habeas Corpus Action. Therefore, the automatic stay shall continue to apply in all other respects to the Appeal and the Habeas Corpus Action, including to the pursuit, execution, and enforcement of any judgment for any claims for money damages and provisional remedies against the Commonwealth or any other Title III debtor.

Further, Movant has failed to demonstrate cause to lift or modify the automatic stay as it applies to the Damages Action. As indicated above, the Damages Action was dismissed, with prejudice, in 2015, and Movant failed to timely file an appeal of the District Court’s decision. Movant also failed to appeal the 2016 denial of his motion for reconsideration

of the dismissal decision. Because the dismissal of his Damages Action was final and with prejudice, Movant could receive no benefit from an order lifting the stay of that action.

Accordingly, the hardship to the Commonwealth of devoting its legal resources to litigation relating to the Damages Action significantly outweighs any possible burden on Movant caused by the automatic stay, and Movant's request for an order lifting or otherwise modifying the automatic stay with respect to the Damages Action is denied.

CONCLUSION

For the foregoing reasons, the Motion is granted in part and denied in part, and the automatic stay is modified only to the extent expressly set forth herein. This Memorandum Order resolves Docket Entry No. 12772.

SO ORDERED.

Dated: June 2, 2020

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

PROMESA  
Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO  
et al.,

(Jointly Administered)

Debtors.<sup>1</sup>

ORDER DENYING OBE E. JOHNSON'S MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY (DOCKET ENTRY NO. 13510)

Before the Court is the *Motion for Relief from Stay Under 362(e)* (Docket Entry No. 13510 in Case No. 17-3283,<sup>2</sup> the "Motion"), filed by Obe E. Johnson (the "Movant"). The Motion, which was originally filed in the case captioned Johnson v. Muñiz, Case No. 14-1867 (D.P.R.) (the "Second Damages Action") and subsequently referred to this Court (see Docket Entry No. 60 in Case No. 14-1867), seeks relief from the automatic stay imposed by the filing of the above-captioned Title III case on (i) a case captioned Johnson v. Morel, Case No. 19-1534 (the "Appeal"), which is currently pending before the United States Court of Appeals for the First Circuit, on appeal from Case No. 09-1172 (D.P.R.) (the "Habeas Corpus Action"), (ii) a case captioned Johnson v. Porrata-Doria, Case No. 14-1841 (D.P.R.) (the "First Damages Action"), and (iii) the Second Damages Action.

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

<sup>2</sup> All docket entry references are to entries in Case No. 17-3283, unless otherwise noted.

On April 7, 2020, Movant filed the *Motion to Be Excluded from Law PROMESA* (Docket Entry No. 12772, "Initial Motion"), which the Court construed as a motion seeking relief from the automatic stay with respect to the Habeas Corpus Action, the Appeal, and the First Damages Action. (*See Memorandum Order Granting in Part and Denying in Part Obe E. Johnson's Motion for Relief from the Automatic Stay* (Docket Entry No. 12772). Docket Entry No. 13316, the "Memorandum Order," at 1-2.) In the Memorandum Order, this Court granted in part and denied in part the Initial Motion, concluding that Movant had established cause to modify the automatic stay to a limited extent with respect the Appeal and the Habeas Corpus Action only.<sup>3</sup> The Court otherwise denied the Initial Motion. Less than a month later, Movant filed the instant Motion.

Movant fails to establish cause to further modify the automatic stay with respect to the Appeal and the Habeas Corpus Action, or for the Court to alter its ruling in the Memorandum Order with respect the First Damages Action. Nor has Movant demonstrated cause to lift or modify the automatic stay as it applies to the Second Damages Action. That action was dismissed with prejudice by Judge Francisco A. Besosa on September 25, 2015 (*see* Docket Entry No. 48 in Case No. 14-1867), and Judge Besosa's ruling was affirmed by the United States Court of Appeals for the First Circuit on July 1, 2016 (*see* Docket Entry No. 58 in Case No. 14-1867). Because the dismissal of the Second Damages Action was, like the dismissal of the First Damages Action, final and with prejudice, Movant could receive no benefit from an order lifting the stay of the Second Damages Action. (*See* Mem. Ord. at 5-6.) Therefore, the hardship to the Commonwealth of devoting its legal resources to litigation relating to the Second Damages Action significantly outweighs any possible burden on Movant caused by the automatic stay, and Movant's request for an order lifting or otherwise modifying the automatic stay with respect to the Second Damages Action is denied. (*See id.*)

Accordingly, the Motion is denied in its entirety. This Order resolves Docket Entry No. 13510.

SO ORDERED.

Dated: July 9, 2020

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

<sup>3</sup> On the same day that this Court entered the Memorandum Order, the United States Court of Appeals for the First Circuit denied Movant's application for leave to file a second or successive habeas petition pursuant to 28 U.S.C. § 2244(b) as well as Movant's subsequent motions and requests for relief, which it construed as supplements to Movant's original application. (*See* Docket Entry No. 16 in Case No. 09-1172.)

District of Puerto Rico

Notice of Electronic Filing

The following transaction was received from Ramirez, Marian entered on 6/29/2021 at 12:29 PM AST and filed on 6/29/2021

Case Name: COMMONWEALTH OF PUERTO RICO and Puerto Rico Public Buildings Authority (PBA)  
Case Number: 17-03283-LTS9  
Document Number: 17184

Docket Text:

ORDER GRANTING IN PART AND DENYING IN PART OBE E. JOHNSON'S [16942] MOTION FOR RELIEF FROM THE AUTOMATIC STAY. Related document: [13316], [13599]. Signed by Judge Laura Taylor Swain on 6/29/2021. (mr) s/c sent by mail to Obe E. Johnson.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

PROMESA  
Title III

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO  
et al.

(Jointly Administered)

Debtors.<sup>1</sup>

ORDER GRANTING IN PART AND DENYING IN PART OBE E. JOHNSON'S  
MOTION FOR RELIEF FROM THE AUTOMATIC STAY (DOCKET ENTRY NO. 16942)

The Court has received and reviewed the motion (Docket Entry No. 16942 in Case No. 17-3283,<sup>2</sup> the "Motion"), filed by Obe E. Johnson (the "Movant"). The Court has also reviewed the *Response of the Commonwealth of Puerto Rico to Motion for Relief from Stay Under 362(e) Filed by Obe E. Johnson* (Docket Entry No. 17163, the "Response"), filed by the Commonwealth of Puerto Rico (the "Commonwealth"). The Motion appears to request two forms of relief. First, the Motion reiterates Movant's request for relief from the automatic stay (or recognition of the inapplicability of the automatic stay), imposed by the filing of the above-captioned Title III case, with respect to certain civil cases commenced by the Movant. That request was the subject of two previous motions filed by Movant. (See Docket Entry No. 12772 and 13510.) Second, the Motion requests that the Court order that Movant be released from prison so that he may attend or listen to the hearing scheduled for July 13, 2021.

<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

<sup>2</sup> All docket entry references are to entries in Case No. 17-3283, unless otherwise noted.

The Court has issued two prior orders addressing Movant's requests for relief from the automatic stay (See Memorandum Order Granting in Part and Denying in Part Obe E. Johnson's Motion for Relief from the Automatic Stay, Docket Entry No. 13316, the "First Lift Stay Order"; Order Denying Obe E. Johnson's Motion for Relief from the Automatic Stay, Docket Entry No. 13599, the "Second Lift Stay Order"). In the First Lift Stay Order, the Court granted in part and denied in part Movant's request for relief from the automatic stay, providing partial relief from the automatic stay with respect to the case captioned Johnson v. Rivera-Mayor, Case No. 09-cv-01172-CCC (D.P.R.), including Movant's appeal therefrom. The Court otherwise denied Movant's request for relief because Movant failed to demonstrate cause to lift or modify the stay. In the Second Lift Stay Order, the Court denied Movant's request to further modify the automatic stay, or to otherwise alter its prior ruling, on the basis that Movant had failed to demonstrate cause for such relief. Here, Movant has failed to proffer facts or legal argument that would provide the Court with a basis to reconsider or modify its prior rulings with respect to the litigations that were the subject of the First Lift Stay Order and the Second Lift Stay Order.

However, to the extent that the Motion seeks relief from the automatic stay with respect to the case captioned Johnson v. Ocasio-Montañez, Case No. 20-cv-01222-JAG (D.P.R.) (the "Second Habeas Corpus Action"), the Commonwealth has consented to modification of the automatic stay

to allow (i) the Second Habeas Corpus Action to proceed to final judgment, and (ii) for the execution and enforcement of any judgment solely with respect to Movant's request for equitable relief; provided, however, that the Title III Stay shall continue to apply in all other respects to the Second Habeas Corpus Action, as well as the Appeal and the First Habeas Corpus Action, including, without limitation, the execution and enforcement of any judgment for any claims for money damages and provisional remedies against the Commonwealth or any other Title III debtor.

(Response ¶ 21.) In light of the Commonwealth's consent to a limited modification of the automatic stay in connection with the Second Habeas Corpus Action, the Court determines that cause exists to modify the automatic stay on the terms proposed by the Commonwealth. Movant's request for relief from the automatic stay is otherwise denied.

Movant's request to be released from prison is denied. The hearing scheduled for 9:30 a.m. (Atlantic Standard Time) on July 13, 2021 (the "Hearing"), concerns the Financial Oversight and Management Board for Puerto Rico's request for approval of the *Disclosure Statement for the Third Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* as well as various related procedures and deadlines (See Docket Entry No. 16756, the "Disclosure Statement Motion"). Movant has not filed a timely objection to the Disclosure Statement Motion, and he therefore would not have leave to present arguments at the Hearing even if he were not confined. Additionally, the Hearing will be held telephonically, and there is therefore no need for Movant to be physically present in a courtroom to follow the

proceedings. Members of the public and press may listen to the Hearing<sup>3</sup> by dialing (888) 363-4749, and entering the access code (7214978) and security code (6937) when prompted.

Accordingly, the Motion is granted in part and denied in part as set forth herein. This Order resolves Docket Entry No. 16942.

SO ORDERED.

Dated: June 29, 2021

/s/ Laura Taylor Swain  
LAURA TAYLOR SWAIN  
United States District Judge

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<sup>3</sup> Recording and further broadcasting of the Hearing by any means are prohibited.

# United States Court of Appeals For the First Circuit

No. 20-1698

OBE E. JOHNSON,

Plaintiff - Appellant,

v.

LCDA. FABIOLA ACARON PORRATA-DORIA; ESTADO LIBRE ASOCIADO DE  
PUERTO RICO; ADMINISTRACION DE CORRECCION DE PUERTO RICO,

Defendants - Appellees.

## ORDER OF COURT

Entered: September 24, 2020  
Pursuant to 1st Cir. R. 27.0(d).

Plaintiff has filed what appears to be an untimely appeal from a judgment entered by the district court on October 23, 2015. On May 3, 2017, the Commonwealth of Puerto Rico filed a petition under Title III of PROMESA, 48 U.S.C. § 2161, et seq., for adjustment of its debts. Under section 2161(a), the bankruptcy stay provisions of 11 U.S.C. §§ 362 and 922 are incorporated into PROMESA. In light of the Commonwealth's PROMESA filing, we direct the parties to show cause within fourteen days of the date of this order whether the automatic stay applies to all or any part of this appeal. The parties are directed to state with specificity the reasoning behind their conclusion one way or the other.

By the Court:

Maria R. Hamilton, Clerk

cc:

Obe E. Johnson

Frances Y. Rivera-Aviles

# United States Court of Appeals For the First Circuit

No. 21-1189

OBE E. JOHNSON,

Plaintiff - Appellant,

v.

LCDA. FABIOLA ACARON PORRATA-DORIA; ESTADO LIBRE ASOCIADO DE  
PUERTO RICO; ADMINISTRACION DE CORRECCION DE PUERTO RICO,

Defendants - Appellees.

## ORDER OF COURT

Entered: June 4, 2021

We have received the parties' responses to this court's order to show cause entered in No. 20-1698. We have considered their responses, and in view of the petition to restructure its debts filed by the Commonwealth of Puerto Rico, appeal Nos. 20-1698 and 21-1189 are stayed. The parties shall file status reports every ninety days. As to plaintiff's request to lift the stay, plaintiff is directed to the Title III court to seek stay relief if such relief is desired.

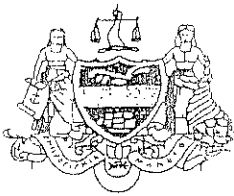
By the Court:

Maria R. Hamilton, Clerk

cc:

Obe E. Johnson

Carlos Lugo-Fiol



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